116-446

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1157~~. 741

SAMUEL A. WALLING, PLAINTIFF IN ERROR,

vs

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED OCTOBER 20, 1884.

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No. 1137.

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vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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1 No. 1161. Parties: The People of the State of Michigan *vs.* Samuel A. Walling. Complaint: Violating liquor-tax law. Pros. att'y: Isaac M. Turner.

Proceedings.

June 29, 1883. Return on appeal filed.
Sept. 25, 1883. Subpœna issued.
" 26, 1883. " returned and filed.
Jour. L, fol. 565. Sept. 26, 1883. Verdict guilty.
Sept. 26, 1883. Deft's requests to charge.
" 29, 1883. Recognizance filed.
" 29, 1883. Bill of exceptions filed.

2 *Complaint.*

STATE OF MICHIGAN, CITY OF GRAND RAPIDS, } ss:
County of Kent, }

The police court of Grand Rapids:

The complaint of Samuel O. Littlefield on oath in writing, taken before me, John T. Holmes, police judge of the police court of Grand Rapids, in said county, upon the 19th day of June, A. D. 1883, who, being duly sworn, says that heretofore, to wit, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, and in the county aforesaid, one Samuel A. Walling, being then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, by being a person then and there engaged in the business of selling spirituous and intoxicating liquors at wholesale to residents of this State, said spirituous and intoxicating liquors so sold to be shipped into this State and furnished and supplied at wholesale to citizens and residents of this State by Cavanaugh & Company, a copartnership not resident of this State and which has not its principal place of business within this State, did unlawfully sell spirituous and intoxicating liquors at wholesale to be shipped from without this State, namely, from the city of Chicago, in the State of Illinois, to a person within this State, namely, to Chapin Pease, who is a citizen and resident of Grand Rapids, in this State, said liquors so by him sold to be furnished and supplied at wholesale by Cavanaugh & Company, a copartnership not a resi-

3 dent of this State, and which, at the time aforesaid, did not have its principal place of business within this State, but had its principal place of business in the State of Illinois, without his, the said Samuel A. Walling, having paid the tax required by law as aforesaid, and he, this said Walling, not having then and there in his possession, and then and there exhibiting the receipt for said tax, or a duplicate of said receipt, to the persons to whom said sale of said spirituous and intoxicating liquors mere made; and the said complainant, on his oath, further says that heretofore, to wit, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, and in the county aforesaid, the said Samuel A. Walling was then and there a

person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, and was then and there a person engaged in the business of soliciting and taking orders from citizens and residents of this State for spirituous and intoxicating liquors, to be shipped into this State and furnished and supplied at wholesale to citizens and residents of this State by a copartnership not a resident of this State, nor having its principal place of business within this State, and that he, the said Samuel A. Walling, did then and there unlawfully solicit and take orders for spirituous and intoxicating liquors, to be shipped from without this State, to wit, from the city of Chicago, in the State of Illinois, to Chapin Pease, who is a citizen and resident of this State, within this State, said liquors to be furnished and supplied at wholesale by Cavanaugh & Company, a copartnership not a resident of this State, and which has not its principal place of business within this State, and that the said Samuel A. Walling had not then and there paid the tax required by law as aforesaid, and did not then and there have in his possession and did not then and there exhibit the receipt for said tax, or a duplicate thereof, to the person from whom he solicited and took the orders for said liquors, against the form of the statute in said case made and provided, and against the peace and dignity of the people of the State of Michigan.

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Wherefore the said complainant prays that the said accused party may be apprehended and held to answer this complaint, and further dealt with in relation to the same as law and justice may require.

SAMUEL O. LITTLEFIELD.

Taken, subscribed, and sworn to before me the day and year first above written.

JOHN T. HOLMES, *Police Judge.*

5 STATE OF MICHIGAN, } ss:
City of Grand Rapids, County of Kent, }

To the chief of police or any member of the police force of the city of Grand Rapids, or to the sheriff of Kent county, Greeting:

Whereas Samuel O. Littlefield hath this day made complaint on oath and in writing to me, John T. Holmes, police judge of the police court of Grand Rapids, in said county, that heretofore, to wit, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, in the county aforesaid, one Samuel A. Walling, being then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, by being a person then and there engaged in the business of selling spirituous and intoxicating liquors at wholesale to residents of this State, said spirituous and intoxicating liquors so sold to be shipped into this State and furnished and supplied at wholesale to citizens and residents of this State by Cavanaugh and Company, a copartnership not a resident of this State, and which has not its principal place of business in this State, did unlawfully sell spirituous and intoxicating liquors at wholesale to be shipped from without this State, namely,

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from the city of Chicago, in the State of Illinois, to a person within this State, namely, to Chapin Pease, who is a citizen and resident of Grand Rapids, in this State, said liquors so by him sold to be furnished and supplied at wholesale by Cavanaugh and Company, a copartnership not a resident of this State, and which at the time aforesaid did not have its principal place of business within this State, but had its principal place of business in the State of Illinois, without his, the said Samuel A. Walling, having paid the tax required by law as aforesaid, and he, the said Walling, not having then and there in his possession and then and there exhibiting the receipt for said tax, or a duplicate of said receipt, to the person to whom said sale of said spirituous and intoxicating liquors were made.

And the said complainant on his oath further says, that heretofore, to wit, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, in the county aforesaid, the said Samuel A. Walling was then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, and was, then and there a person engaged in the business of soliciting and taking orders from citizens and residents of this State for
7 spirituous and intoxicating liquors, to be shipped into this State, and furnished and supplied at wholesale to citizens and residents of this State by a copartnership not a resident of this State, nor having its principal place of business within this State; and that the said Samuel A. Walling did then and there unlawfully solicit and take orders for spirituous and intoxicating liquors to be shipped from without this State, to wit, from the city of Chicago, in the [State] of Illinois, to Chapin Pease, who is a citizen and resident of this State, within this State, said liquors to be furnished and supplied by Cavanaugh and Company, a copartnership not a resident of this State, and which has not its principal place of business within this State; and that the said Samuel A. Walling had not then and there paid the tax required by law as aforesaid, and did not then and there have in his possession, and did not then and there exhibit the receipt for said tax, or a duplicate thereof, to the person from whom he solicited and took orders for said liquors, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

And whereas, on examination on oath, and in writing of the said complainant by me, the said police judge, it appears to me, the said police judge, that said offense has been committed, and there is just cause to suspect the said accused party to have been guilty
8 thereof; therefore, in the name of the people of the State of Michigan, you, and each of you, are hereby commanded forthwith to take the said accused party, and bring before me, the said police judge, at the police court room of the police court of said city, to be dealt with according to law.

Given under my hand and seal, at the city of Grand Rapids, in said county on the 19th day of June, A. D. 1883.

JOHN T. HOLMES,
Police Judge.

By virtue of this warrant, to me directed, I have taken the within-named Samuel A. Walling, whom I have before John T. Holmes, the police judge within named, as I am within commanded.

Dated this 25th day of June, A. D. 1883.

CORNELIUS GAST,
Police Constable.

9 In Police Court.

STATE OF MICHIGAN, } ss:
County of Kent, City of Grand Rapids, }

Be it remembered, that on the 28th day of June, A. D. 1883, Samuel A. Walling, & Sidney A. Hart, and A. V. Pautlind, of the city of Grand Rapids, in said State, and William W. Oliver, of the village of Kalamazoo, in said State, personally came before the police court of Grand Rapids, in said county, and severally and respectively acknowledged themselves to be indebted to the people of the State of Michigan as follows, to wit, the said Samuel A. Walling in the sum of one hundred dollars, and the said Sidney A. Hart, A. V. Pautlind, and William W. Oliver, in the sum of one hundred dollars each, to be levied of their respective goods, and chattels, and tenements, to the use of the said people of the State of Michigan, if default shall be made in the conditions following:

Whereas the said Samuel A. Walling was brought before the said police court by virtue of a warrant duly issued by me on the 19th day of June, A. D. 1883, upon complaint and examination of Samuel O. Littlefield on oath, taken before me, the said judge,
10 on the same day, which said complaint was by me reduced to writing, wherein the said Samuel O. Littlefield complained that the said Samuel A. Walling, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, in said county, being then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, by being a person then and there engaged in the business of selling spirituous and intoxicating liquors at wholesale to residents of this State, said spirituous and intoxicating liquors so sold to be shipped into this State and furnished and supplied at wholesale to citizens and residents of this State by Cavanaugh and Company, a copartnership not a resident of this State, and which has not its principal place of business within this State, did unlawfully sell spirituous and intoxicating liquors at wholesale to be shipped from without this State, namely, from the city of Chicago, in the State of Illinois, to a person within the State, namely, to Chapin Pease, who is a citizen and resident of Grand Rapids, in this State, said liquors so by him sold to be furnished and supplied at wholesale by Cavanaugh and Company, a copartnership not a resident of this State and which at the time aforesaid did not have its principal place of business within this State, but had its principal place of business in the State of
11 Illinois, without his the said Samuel A Willing having paid the tax required by law, as aforesaid, and he the said Walling not having then and there in his possession, and then and

there exhibiting the receipt for said tax, or a duplicate of said receipt, to the persons to whom the said sale of said spirituous and intoxicating liquors were sold, against the form of the statute in such case made and provided, &c., of which offense the said Samuel A. Walling, after trial thereof, was duly convicted before the said police court on the 28th day of June, A. D. 1883, and was then sentenced therefor by the said police court to pay a fine of twenty-five dollars, together with the costs of prosecution, taxed by me at five dollars and twelve cents, and that in default of the immediate payment of said fine and costs said Samuel A. Walling should be forthwith imprisoned in the common jail of said county for and during the period of sixty days from and including the said day of his conviction, unless said fine and costs be sooner paid, or until thence discharged by due course of law, which said fine and costs have not been paid.

And whereas the said Samuel A. Walling appeals from
12 said judgment and sentence so rendered by me to the circuit court for the countyof Kent:

Now, therefore, the condition of this obligation is such, that if the said Samuel A. Walling shall appear before the said appellate court on the first day of the next term thereof and prosecute his said appeal at said term to effect, and abide the orders and judgment of said circuit court, then this recognizance shall be void; otherwise of force.

SAMUEL A. WALLING.
SIDNEY A. HART.
A. V. PAUTLAND.
W. W. OLIVER.

Subscribed and acknowledged the day and year first above written, before me—

JOHN T. HOLMES,
Police Judge.

13 *Return of Appeal.*

STATE OF MICHIGAN, } ss:
County of Kent, City of Grand Rapids, }

I, the undersigned, John T. Holmes, the police judge of the police court of Grand Rapids, in said county, do hereby certify and return to the circuit court for the county of Kent, that on the 19th day of June, A. D. 1883, one Samuel O. Littlefield made complaint to me that one Samuel A. Walling, on the 1st day of June, A. D. 1883, at the city of Grand Rapids, in said county, being then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, by being a person then and there engaged in the business of selling spirituous and intoxicating liquors at wholesale to residents of this State, said spirituous and intoxicating liquors so sold to be shipped into this State, and furnished and supplied at wholesale to citizens and residents of this State by Cavanaugh & Company, a copartnership not a resident of this State

and which has not its principal place of business within this State, did unlawfully sell spirituous and intoxicating liquors at wholesale to be shipped from without this State, namely, from the city of Chicago, in the State of Illinois, to a person within this State, namely, to Chapin Pease, who is a citizen and resident of Grand Rapids, in this State, said liquors so sold by him sold to be furnished and supplied at wholesale by Cavanaugh & Company, a copartnership not a resident of this State, and which at the time aforesaid did not have its principal place of business within this State, but
14 had its principal place of business in the State of Illinois, without his, the said Samuel A. Walling, having paid the tax required by law as aforesaid, and he, the said Walling, not having then and there in his possession, and then and there exhibiting the receipt for the said tax, or a duplicate of said receipt, to the persons to whom said sale of said spirituous and intoxicating liquors were made; and the said complainant further says that on the 1st day of June, A. D. 1883, at the city of Grand Rapids, in said county, the said Samuel A. Walling was then and there a person liable to pay a tax under act number two hundred and twenty-six of the session laws of 1875, and was then and there a person engaged in the business of soliciting and taking orders from citizens and residents of this State for spirituous and intoxicating liquors, to be shipped into this State, and furnished and supplied at wholesale to citizens and residents of this State by a copartnership not a resident of this State, nor having its principal place of business within this State; and that he, the said Samuel A. Walling, had not then and there paid the tax required by law as aforesaid, and did not then and there have in his possession, and did not then and there exhibit, the receipt for said tax, or a duplicate thereof, to the person from whom he solicited and took the order for said liquors, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

Whereupon I, said judge, did examine the said complainant on oath, which said complaint was by me reduced to writing, and subscribed by said Samuel O. Littlefield, and it appearing to me, the said judge, that the said offense had been committed, I issued a warrant, directed to the chief of police, or any member of the police force of the city of Grand Rapids, or to the sheriff of Kent county, in said county, and commanding such chief of police, or any
15 member of said police force, or sheriff of Kent county, forthwith to arrest the said Samuel A. Walling, and bring him before me, to be dealt with according to law, which said warrant was, on the 25th day of June, 1883, returned to me by Cornelius Gast, one of the police constables of the city of Grand Rapids, in said county, with the body of said Samuel A. Walling in his custody.

As well the said Samuel O. Littlefield as the said Samuel A. Walling appeared before me, and the reading of the charge made against the said Samuel A. Walling, as stated in the warrant to arrest, was waived by him, the said Samuel A. Walling, and he, being required by me to plead thereto, said that he was not guilty thereof, and waived trial by jury.

After hearing the evidence, the court found said Samuel A. Walling guilty, whereupon I, the said judge, did render judgment that the said Samuel A. Walling should pay a fine of $25 and costs of prosecution, taxed at five and $\frac{12}{100}$ dollars, and in default of immediate payment thereof, then the said Samuel A. Walling should be committed to the common jail of said county, there to be confined and kept for the period of 60 days from and including the day of conviction, unless said fine and costs be sooner paid, or until thence released by due course of law.

And thereupon the said Samuel A. Walling appealed from the said judgment and sentence to the circuit court for the county of Kent, and did then and there, on the 28th day of June, A. D. 1883, enter into a recognizance before me, as required by law, himself in the sum of one hundred dollars, with three sureties, approved by me, in the sum of one hundred dollars each, conditioned that
16 the said Samuel A. Walling should appear before the circuit court for the county of Kent, on the first day of the next term thereof, and prosecute his appeal at said term to effect, and abide the orders and judgment of said court, and thereupon I discharged the said Samuel A. Walling.

And I do further certify and return, that the recognizance is annexed to this my return to said appeal, and herewith returned to said circuit court.

Given under my hand, at the city of Grand Rapids, in said county, on this 29th day of June, A. D. 1883.

JOHN T. HOLMES, [L. S.]
Police Judge.

Received and filed June 29th, 1883.

ORLAND H. GODWIN, *Clerk.*

17 At a general term of the circuit court for the county of Kent, continued and held at the court-house, in the city of Grand Rapids, in said county, on the twenty-sixth day of September, A. D. 1883.

Present: Hon. Robert M. Montgomery, circuit judge.

Selling Intoxicating Liquors without Having Paid a Tax.

The court opened for business in due form.

THE PEOPLE OF THE STATE OF MICHIGAN *vs.* SAMUEL WALLING.

In this cause, the respondent being in open court, a trial was ordered; whereupon came a jury, to wit:

Nathaniel Brayton, John McMillan, George T. Saunders, Peter Dogger, John Morman, A. F. Cook, Charles Easton, John Sillaway, Robert Howell, Franz Berles, Clifton S. Cowles, Fred L. Hodges, good and lawful men, who being duly impannelled, tried, and sworn, well and truly to try and true deliverance make between the people of this State and the prisoner at the bar, accord-

18 ing to the laws of this State and the evidence given them in open court, sat together and heard the proofs and allegations of the parties and the charge of the court, and retired from the bar thereof in charge of Freeman Brewer, an officer of the court duly sworn for that purpose, and after being absent for a time return into court and say upon their oaths that they find the respondent guilty in manner and form as the said People hath in their complaint alleged against him.

(Signed) ROBERT M. MONTGOMERY,
Circuit Judge.

19 STATE OF MICHIGAN:

In Circuit Court for the County of Kent.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
SAMUEL A. WALLING.

The respondent respectfully requests the court to charge the jury as follows:

Refused.

1st. That the statute under which this prosecution is brought is repugnant to the Constitution of the United Statss; it is in conflict with ¶ 3 of § VIII of article 1. It is in conflict with ¶ 2, § 10 of article 1. It is in conflict with ¶ 1, sec. 2 of art. 4. Being in conflict with the provisions of the Constitution of the United States, it is void, and the jury must therefore find the respondent not guilty.

2nd. The statute is void, for the reason that it is a license of the liquor traffic, and therefore in violation of sec. 47 of art. 4 of
20 the constitution of the State of Michigan, in force at the time of its passage, and the jury must find the respondent "not guilty."

3rd. Under the facts disclosed in this case the jury must find the respondent "not guilty."

POWERS & OXENFORD,
Att'ys for Respondent.

21 *Bill of Exceptions.*

STATE OF MICHIGAN:

The Circuit Court for the County of Kent.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
SAMUEL A. WALLING.

At a session of said court held at the court-house in the city of Grand Rapids, in said county of Kent, on the 26th day of September, A. D. 1883, before the Honorable Robert M. Montgomery, judge of said circuit court, the issue joined in this cause came on to be tried

by a jury of the said county, for that purpose duly impannelled as aforesaid to try the said issue, also came, and were then and there duly chosen and sworn to try the said issue, and upon the trial of said issue the counsel for the said People, to maintain and prove the issue on their part, called as a witness—

CHAPIN PEASE, who, being duly sworn, testified as follows:

I reside at Grand Rapids, in this State; I am a retail liquor dealer, and carry on the business in this city; I am acquainted with Samuel A. Walling, the respondent.

Question. What business is he engaged in?

By Mr. POWERS, counsel for the respondent: May it please
22 the court, I desire to object to the introduction of any testimony under the complaint in this case, for the reason that it is immaterial and incompetent.

The statute of this State, under which this prosecution is brought, the same being act number two hundred and twenty-six of the session laws of 1875, is repugnant to the Constitution of the United States, and is therefore void.

It is in conflict with paragraph three, of section eight, article one, of the United States Constitution.

It is in conflict with paragraph two, of section ten, of article one.

And it is also in conflict with paragraph one, of section two, of article four.

I also insist that no testimony is admissible, for the reason that at the time of the passage of the act, which in effect authorizes the licensing of the liquor traffic, the Legislature of Michigan was forbidden by our State constitution to pass such a law. I refer to section forty-seven of article four of the constitution of the State of Michigan as in force in 1875.

All of said objections the court then and there overruled, and to which ruling the respondent, by his said counsel, then and there duly excepted.

The witness continued: Mr. Walling, on June 1st, and before and since that time, has been engaged as a traveling salesman for the firm of Cavanaugh & Company, of Chicago, Illinois, and his business has been that of selling liquor at wholesale for that firm.
23 The place of business of Cavanaugh & Company is in Chicago, and that firm has no place of business in this State.

On the 1st of June, 1883, the respondent solicited my order for a barrel of whiskey to be shipped to me by Cavanaugh & Company from the city of Chicago, and from without this State. I gave my order to Mr. Walling for a barrel of whiskey, and the same was shipped to me by Cavanaugh & Company from Chicago, and I paid Cavanaugh & Company for the same. Mr. Walling at no time exhibited to me any receipt from the auditor general of Michigan that he had paid the tax required by the statute.

And the counsel for said People, to further maintain the issue upon their part, introduced testimony showing that the respondent had never paid any tax to the auditor general of Michigan, or received

from him a receipt, as required by the statute in question. That in June, 1883, the respondent was in the employ of Cavanaugh & Company, residents of Chicago, Illinois. That Cavanaugh & Company is a wholesale liquor firm, having its principal place of business in Chicago and no place of business in Michigan. That the respondent solicited orders for liquors to be furnished at wholesale by said firm from its place of business in Chicago. That on June 1st, 1883, the respondent solicited and obtained an order from Chapin Pease for one barrel of liquor to be shipped to Chapin Pease from without the State by said Cavanaugh & Company.

And thereupon the said People rested their case.

And the said respondent, by his counsel, moved the said court to strike out all of the testimony in the case and discharge
24 the respondent, for the reasons heretofore fully set forth in the objection made by said respondent, by his counsel, to the introduction of any testimony in said cause.

Which motion the said court denied, and the said respondent, by his counsel, then and there duly excepted.

Thereupon the respondent rested his case.

And the said respondent, by his counsel, then and there in writing, requested the said court to charge the said jury as follows:

First. That the statute under which this prosecution is brought is repugnant to the Constitution of the United States. It is in conflict with paragraph three of section eight of article one; it is in conflict with paragraph two of section ten of article one; it is in conflict with paragraph one of section two of article four. Being in conflict with the provisions of the Constitution of the United States, it is void, and the jury must therefore find the respondent not guilty.

Which request said court then and there declined to give, and refused to so charge said jury, and to which ruling and decision said respondent, by his counsel, duly excepted.

And thereupon said respondent, by his counsel, further, in writing, requested said court to instruct said jury as follows:

Second. The statute under which this prosecution is brought
25 is void, for the reason that it authorizes the grant of a license of the liquor traffic, and it therefore violates section forty-seven of article four of the constitution of the State of Michigan, as in force at the time of the passage of the act, and the jury must therefore find the respondent not guilty.

Which request said court then and there declined to give, and refused so to charge said jury, and to which ruling and decision said respondent, by his counsel, duly excepted.

And then said respondent, by his counsel, further, in writing, requested said court to instruct said jury as follows:

Third. Under the facts disclosed in this case, the jury must find the respondent not guilty.

Which request said court then and there declined to give, and refused so to charge said jury, and to which ruling and decision said respondent, by his counsel duly excepted.

And thereupon said court proceeded to charge the jury as follows:

GENTLEMEN OF THE JURY: The statutes under which this complaint is brought having never been passed upon by the supreme court of this State, I shall treat its provisions as within the power of legislature of this State, and the statute in question as a valid statute.

The charge against the respondent is, that he was a person liable to pay a tax under the provisions of act number two hun-
26 dred and twenty-six of the laws of 1875; that he was engaged in the business of selling and taking orders for spirituous and intoxicating liquors and taking orders and supplying the same at wholesale to citizens and residents of this State in behalf of a firm not residents of this State or having its principal place of business in this State. That the respondent, Samuel A. Walling, did take orders and ship from the city of Chicago, in the State of Illinois, through the Messrs. Cavanaugh & Company, in whose employ he acted, liquors at wholesale to citizens within this State. That the respondent had not paid the tax required by the statute to be paid, and did not have in his possession or exhibit the receipt required by law. If the offense, as charged, has been proven, then I apprehend you will have no difficulty in applying the facts to the instructions I shall give you.

I instruct you, that if you find that the respondent had not paid the tax required by the statute, to the auditor general of this State, for selling or soliciting orders for intoxicating liquors, and that he solicited orders from citizens of this State for spirituous and intoxicating liquors to be furnished by Cavanaugh & Company, of Chicago, at wholesale, to be shipped into this State, from the State of Illinois, in quantities of more than five gallons: that the respondent was in the employ of the said firm, they being residents of Chicago, and not residents of this State, and having its principal place of business in Chicago, in the State of Illinois, and not in this State, and that said respondent, on June 1st, 1883, did solicit and obtain an order from a citizen of this State, namely, Chapin Pease, a citizen and resident of Grand Rapids, in this State, for spirituous and intoxicating liquors, to be furnished at wholesale, that is, in quantities of more than five gallons, and to be shipped into this State from Chicago, Illinois, by said Cavanaugh & Company, of Chicago, Illinois, to Chapin Pease, the respondent not having paid the tax re-
27 quired by the statute to be paid to the auditor general of this State, namely, a tax of three hundred dollars, and not exhibiting to said Chapin Pease the receipt of the auditor general for the tax required or a duplicate, you will say by your verdict that the respondent is guilty. If, on the other hand, you find that any one of these facts have not been established, your verdict will be not guilty.

In passing upon the facts, you will give the respondent the benefit of any reasonable doubt as to whether all of the facts required to be proven have been established by the evidence.

The counsel for the respondent, immediately after the giving of said charge to the jury by the said judge, did then and there except to the charge thus given as follows:

"We except to the refusal of the court to give respondent's request numbered one; to the refusal of the court to give respondent's request numbered two; and to the refusal of the court to give respondent's request numbered three."

"We except to that part of the charge of the court in which it is stated that the act under which this prosecution is brought will be treated as valid."

"We except to that part of the charge of the court commencing with these words: 'I instruct you that if you find that the respondent has not paid the tax, &c.,' and concluding with the words 'you will say by your verdict that the respondent is guilty.'"

The foregoing comprises all the testimony given on said trial and the entire charge of said court.

28 The said cause was thereupon submitted to the jury, and they then and there found by their verdict that the said respondent was guilty in manner and form as alleged in the complaint on file in this case.

And because none of these exceptions so offered and made to appear upon the record of the said trial, therefore on the prayer of the said respondent, by his counsel, the said circuit judge hath signed this bill of exceptions, before sentence, according to the statute in such case made and provided, this 29th day of September, A. D. 1883.

ROBERT M. MONTGOMERY,
Circuit Judge.

Filed Sept. 29, 1883.

29 STATE OF MICHIGAN. } ss:
County of Kent, }

The Circuit Court for the County of Kent.

THE PEOPLE OF THE STATE OF MICHIGAN *vs.* SAMUEL A. WALLING.

I, O. H. Godwin, clerk of the circuit court for said county of Kent, do hereby certify that the foregoing is a true and correct transcript, compared by me with the original files and records now remaining in my office and of record in said court in the above-entitled cause, and of the whole of such original record, excepting the recognizance and one witness' subpœna.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said circuit court, at the city of Grand Rapids, in said county, this 5th day of October, A. D. 1883.

[SEAL.] O. H. GODWIN, *Clerk,*
By CHAS. G. GODFREY, *Deputy.*

30 Exceptions from Kent.

7130. Parties: The People of the State of Michigan, plaintiff, *vs.* Samuel A. Walling, defendant. Plaintiff's attorneys: J. J. Van Riper. Defendant's attorneys: Powers & Oxenford.

Proceedings.

Oct. 6, 1883. Exceptions filed.
Journal: F. 306. Oct. 9. Placed on docket.

Journal: F. 341. Oct. 19, 1883. Continued.
Dec. 20, 1883. Notice of hearing & note of argument, January term, filed.
Journal: F. 464. Jan. 29, 1884. Argued and submitted.
Journal: " 535. Ap'l 9, 1884. Conviction affirmed.
Ap'l 14, 1884. Writ of error from Supreme Court U.S., allowed by Cooley, chief justice, filed.
Ap'l 14, 1884. Copy of writ of error for adverse party filed.
May 13, 1884. Bond to adverse party, approved by Cooley, C. J., filed.
May 13, 1884. Copy of bond for adverse party filed.
May 13, 1884. Bond to clerk U. S. Sup. C't, approved by Sherwood, J., filed.
June 3, 1884. Citation, with proof of service, filed.
Aug. 14, 1884. Assignment of errors Sup. C't U. S. filed.
" 20, 1884. Transcript forwarded to clerk Sup. C't U. S.

31 At a session of the supreme court of the State of Michigan, held at the supreme court-room in the city of Lansing, on the twenty-ninth day of January, in the year one thousand eight hundred and eighty-four.

Present: The Honorable Thomas M. Cooley, chief justice, James V. Campbell, Thomas R. Sherwood, John W. Champlin, associate justices.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

vs.

SAMUEL A. WALLING, Defendant.

This cause is argued by the attorney general for the people and O. W. Powers for defendant, and submitted.

32 STATE OF MICHIGAN:

In Supreme Court.

THE PEOPLE *vs.* SAMUEL A. WALLING.

The defendant was prosecuted under act 226, sess. laws 1875 (being sections 1275–1277, How. St.), for soliciting and taking orders from citizens of this State for spirituous and intoxicating liquors, to be shipped into this State and furnished and supplied at wholesale by a copartnership not a resident of this State, nor having its principal place of business therein, without having first paid the tax required by said act. The defendant based his defense upon the unconstitutionality of the statute, which reads as follows:

33 "SECTION 1. The people of the State of Michigan enact, That every person who shall come into or being in this State shall engage in the business of selling spirituous and intoxicating, malt, brewed, or fermented liquors, to citizens or residents of this State at wholesale, or of soliciting or taking orders from citizens or residents of this State for any such liquors to be shipped into this

State, or furnished, or supplied at wholesale to any persons within this State, not having his, their, or its principal place of business within this State, shall, on or before the fourth Friday of June, in each year, pay a tax of three hundred dollars if engaged in selling, or soliciting, or taking orders for the sale of such spirituous and intoxicating liquors, and one hundred dollars for malt, brewed, or fermented liquors. Such tax shall be paid to the auditor general, and be by him paid into the State treasury, to the credit of the general fund.

"SEC. 2. Upon the payment of such tax, the auditor general shall issue to such person a receipt therefor, and in case of loss thereof, a duplicate, when required by the person to whom the original receipt was issued. Every person making such sales, or soliciting, or taking orders, as in the first section of this act provided, shall exhibit such receipt to every person to whom he makes sale, or from whom he takes or solicits orders for such liquors, and shall exhibit such receipt to any supervisor, justice of the peace, sheriff, under sheriff, or deputy sheriff, city or village marshal, chief of police, policeman, or constable, when required so to do, during business hours.

"SEC. 3. Any person liable to pay any tax under this act, who shall sell any liquors, or solicit, or take orders for liquors to be shipped from without this State, to any person within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, without the tax herein provided for having been paid, and having in his possession, and exhibiting the receipt therefor, or a duplicate thereof; and any person residing, or being in this State, who shall purchase liquors from a person liable to pay a tax under this act, who has not paid such tax, or shall give an order for liquors to such person liable to pay a tax under this act, which order is to be filled, and such liquors are to be shipped from without this State to a person within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, and in default of payment thereof shall be imprisoned not less than ten, nor more than ninety days, or both, such fine and imprisonment in the discretion of the court.

"SEC. 4. Selling at wholesale shall be deemed to mean and include all sales of such spirituous and intoxicating, malt, brewed, or fermented liquors, in quantities of five gallons or over, or one dozen quart bottles or more, or soliciting orders therefor at any one time of any one person."

Defendant claims and insists that this act is in conflict with paragraph 3 of sections 8 and 10, article 1, and paragraph 2 of section 2, article 4, of the Federal Constitution. Defendant also
34 claims that this statute violates section 47 of article 4 of the Constitution of this State, for the reason that it licenses

the sale of spirituous liquors, which was prohibited by that section when the statute was enacted, but since that time repealed. The cause was first tried before Judge Holmes, in the police court at Grand Rapids; the defendant was convicted, and required to pay a fine of $25 and costs of prosecution. On appeal to the circuit court, a trial was there had by a jury before Judge Montgomery, and the respondent was again convicted.

The case now comes before us on error, the record containing a bill of exceptions. The constitutional questions raised upon the record were those discussed before us on the hearing, and will only be considered by this court. The imposition of the tax upon the business of selling intoxicating liquor is not a license, and is not a violation of the constitution of our State, as supposed by counsel for defendant. The business contemplated by the statute is selling liquors to residents of this State, which are to be supplied from manufacturers out of the State. The statute does not create or authorize the business, but rather assumes its existence (whether lawful or not, can make no difference), and, viewing the traffic with disfavor, the Legislature of Michigan, as has the law-making power of every civilized State and nation during the last hundred years, by resort to the police power sought in various ways to prevent and restrain, by its enactments, the evil effects upon the State and society. The statute under consideration belongs to this class of legislation. Its object was to curtail the traffic, show legislative disapproval, and to a certain extent provide revenue to aid in ameliorating the evils which the trade has never failed to entail upon the community. It was for these purposes the tax upon the business was authorized and for the enforcement of its collection the penalty in this case was imposed. Under the decision of this court the law is not in conflict with our constitution. Youngblood *v.* Sexton, 32 Mich., 406; Kitson *v.* Mayor of Ann Arbor, 26 Mich., 325.

The Constitution of the United States, in section 8, article I, paragraph 3, provides that Congress shall have power to regulate commerce with foreign nations and among the several States, and counsel claim the statute is obnoxious to this provision of the Federal Constitution. I have failed to discover the conflict claimed. The question of foreign commerce is not involved in this case; the constitutional provision relating to commerce between States only is invoked. The statute does not prohibit the introduction and sale of liquors made outside the State. It simply taxes the person who carries on the business here, by making sales in this State. It in no way interferes with the introduction of the liquors here. It tolerates and regulates, but seeks not to prohibit. I think in this case no question can be successfully made under this clause of the Constitution until the point has been reached where regulation cease and prohibition begins. A State may pass all such laws as she may deem necessary or desirable for the safety, health or morals of her people, and may use whatever means she may think proper to that end, provided she does not antagonize any law of Congress, Com. V. Kimball, 24 Pick., 363; License Cases, 5 How., 575.

The use of intoxicating liquor, from the earliest ages, has ever been

regarded as a thing not to be encouraged. The ancients used wine in its simplest form, but since the discovery of alcohol it has re-
36 quired all the power the government can exert to regulate and control the demoralizing effects. The train of evils which mark the progress of intemperance through the later years is to obvious to require comment. "It brings with it degradation of character, impairs the moral and physical energies, wastes the health, increases the number of orphans, paupers, insane, and criminals, undermines the morals, and smites its victims to the lowest depths of vice and profligacy." The excessive use of the article has always fallen under universal condemnation, and its use has long been so closely connected with its abuse as to render legal prohibition or regulation absolutely necessary for the protection of society. Prohibition has been tried in this State. Failing, however, to accomplish the result desired, the people have resorted to the more usual means of regulation and taxation, and which clearly come within the proper exercise of the police power of the State. State legislation taxing the sale of intoxicating liquors has been held valid and constitutional, under the police powers of the State, in every State where the question has been raised, and by the Supreme Court of the United States. Bartemyer *v.* Iowa, 18 Wall., 129; License Cases, 5 How., 504; Gibbons *v.* Ogden, 9 Wheat., 205; Passenger Cases, 7 How., 283.

In this case taxation alone is under consideration. The importation and its sale in this State are in no manner abridged. The outside manufacturer's agent is entitled to all the rights and privileges that are secured to the resident of the State. In fact, this statute is more favorable to him than the resident manufacturer. The former selling or soliciting the sale of intoxicating liquors at wholesale, to be shipped to this State, is required to pay a tax of $300, and $100 for malt brewed, or fermented liquors (see section 1277, How.
37 St.); the latter, who sells intoxicating liquors at wholesale, must pay a tax of $500, and for malt, brewed, or fermented liquors a tax of $200. (How. St., sec. 1281.)

It seems difficult to discover any unjust discrimination against citizens of other States under the provisions of this act. Woodruff *v.* Parham, 8 Wall., 123. The tax is against the person who makes the sale, who carries on the business of selling here, and not the dealer who furnishes and ships the goods. It is not a tax upon commerce within the constitutional provision cited; nor does it interfere with any right or law of Congress; nor is it an attempt to regulate commerce between this and other States. The right of a State to tax occupations generally is recognized in Brown *v.* Maryland, 12 Wheat., 444; Nathan *v.* Louisiana, 8 How., 80; Pierce *v.* New Hampshire, 5 How., 593; Hinson *v.* Lott, 8 Wall., 148; Machine Co. *v.* Gage, 100 U. S., 676.

The third point made against the act is that it contravenes section 2, article 4, sec. 1, which reads as follows: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." In commenting upon this clause of the Constitution, Chief Justice Cooley, in his work on taxation, says:

"Among these privileges and immunities is that of being exempt in other States from higher taxes or impositions than are paid by the citizens of such other States. Under this provision, while it is entirely admissible to levy taxes upon the business or the property of non-resident traders within the State, it is not competent to require them to take out a license or to pay a sum greater than that demanded of residents." In these views I fully concur, but I am unable to see how they can be made to support the views of counsel for defendant. The right to tax the business or property of
38 the non-resident in this State is fully sustained, and no license is required to be taken. Nothing is required of him that is not required of the resident vendor.

The argument of defendant's counsel, that the non-resident must pay a tax for every servant or agent he may have making sales for him, is specious. There is nothing to prevent the non-resident manufacturer or dealer from engaging in the business of selling and paying his tax, and employing as many servants or agents as he may choose to assist him. It is the person who pays the tax that is permitted to do the business, and is, of course, on his complying with the law, allowed to carry on the business to any extent he chooses; and, of course, may employ or use the necessary help for that purpose. I do not regard the statute obnoxious to this clause of the Constitution. So long as the person paying the tax stands on the same footing as the resident, both as to sales made and quantity sold, there is no discrimination against the non-resident. Guy *v.* Baltimore, 100 U. S., 438; Ward *v.* Maryland, 12 Wall., 418.

The remaining point made by defendant's counsel is that the statute violates paragraph 2 of section 10 of article I of the Constitution, which prohibits the States, without the consent of Congress, laying any tax or duties on imports or exports, except such as may be absolutely necessary for executing its inspection laws. The duties referred to in this section relate solely to the duties upon foreign and imported articles, and do not refer to taxes in the nature of those mentioned in this statute, or to special taxes which grow
39 out of the internal police regulations of the State; the terms "imports" and "exports" do not refer to goods brought from one State to another, but only to articles imported from or exported to foreign countries. Brown *v.* Maryland, 12 Wheat., 454; Woodruff *v.* Parham, 8 Wall., 123; License Cases, 5 How., 593.

We find no error in the record, and the conviction must be affirmed.

T. R. SHERWOOD.
T. M. COOLEY.
J. V. CAMPBELL.
J. W. CHAMPLIN.

40 *Order from Exceptions Affirmed.*

At a session of the supreme court of the State of Michigan, held at the supreme court-room in the city of Lansing, on the ninth day

of April, in the year one thousand eight hundred and eighty-four.

Present: The Honorable Thomas M. Cooley, chief justice; James V. Campbell, Thomas R. Sherwood, John W. Champlin, associate justices.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

vs.

SAMUEL A. WALLING, Defendant.

This cause having been brought to this court upon exceptions from the circuit court for the county of Kent, and the same and the matters therein having been seen and considered by the court, therefore it is ordered that it be certified to the said circuit court for the county of Kent that there is no error in the rulings and proceedings therein, and that said circuit court proceed to render judgment upon the verdict.

41 The United States of America to the People of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein Samuel A. Walling is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas M. Cooley, chief justice of the supreme court of the State of Michigan, this 13th day of May, A. D. 1884.

THOMAS M. COOLEY,
Chief Justice of the Supreme Court of the State of Michigan.

[Endorsed:] United States of America. Supreme court. Samuel A. Walling, plaintiff in error, *vs.* The People of the State of Michigan, defendant in error. Citation. Filed June 3, 1884. Chas. C. Hopkins, clerk sup. c't of the State of Michigan. Powers & Oxenford, att'ys for plaintiff in error.

42 UNITED STATES OF AMERICA, } *ss:*
State of Michigan. }

I hereby accept due personal service on the part of and in behalf of the People of the State of Michigan (the within-named defendant in error) of the within citation.

Dated Lansing, June 3, 1884.

J. J. VAN RIPER,
Attorney General of the State of Michigan.

United States of America.

STATE OF MICHIGAN, } ss:
County of Kalamazoo, }

Samuel W. Oxenford, of said county, being duly sworn, deposes and says: That he served the within citation by delivering a true copy thereof to J. J. Van Riper, attorney general of the State of Michigan, at the city of Kalamazoo, in said State of Michigan, and at the same time exhibiting to him this original on the 17th day of May, A. D. 1884.

SAMUEL W. OXENFORD.

Subscribed and sworn to before me this 2nd day of June, A. D. 1884.

JAMES M. DAVIS,
United States Circuit Court Commissioner for the Western District of Michigan, Southern Division.

43 Know all men by these presents, that we, Samuel A. Walling, of the city of Grand Rapids, and State of Michigan, as principal, and Willard W. Oliver and Henry F. Badger, of the city and county of Kalamazoo, and State of Michigan, as sureties, are held and firmly bound unto The People of the State of Michigan in the full and just sum of five hundred dollars, to be paid unto the said People of the State of Michigan; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of April, A. D. 1884.

Whereas lately at a session of the supreme court of the State of Michigan, in a suit depending in said court between The People of the State of Michigan as plaintiff and appellee and Samuel A. Walling as defendant and appellant, a final judgment was rendered against the said Samuel A. Walling, and the said Samuel A. Walling having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said plaintiff and

44 appellee, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Samuel A. Walling shall prosecute said writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and effect.

SAMUEL A. WALLING. [L. S.]
WILLARD W. OLIVER. [L. S.]
HENRY F. BADGER. [L. S.]

I approve of the foregoing bond and of the sureties therein.
May 13th, 1884.

THOMAS M. COOLEY,
Chief Justice of the Supreme Court of the State of Michigan.

[Endorsed:] United States Supreme Court. Samuel A. Walling, plaintiff in error, *vs.* The People of the State of Michigan. Copy of bond. Filed May 13, 1884. Chas. C. Hopkins, clerk sup. c't of Michigan. Powers & Oxenford, atty's for plaintiff in error.

45 UNITED STATES OF AMERICA:

Supreme Court.

SAMUEL A. WALLING, Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

Now comes the said Samuel A. Walling, plaintiff in error, and for assignment of errors herein says: That at the June term, A. D. 1883, of the circuit court for the county of Kent, in the State of Michigan, in which the said People of the State of Michigan was plaintiff and said Samuel A. Walling was respondent, a judgment of conviction was rendered against him, said Samuel A. Walling, in favor of the said People, for a violation of act number two hundred and twenty-six of the session laws of 1875 of the State of Michigan.

And the said Samuel A. Walling, plaintiff in error, represents furthermore that at the April term, A. D. 1884, of the supreme court of the State of Michigan, which is the highest court of law and
46 equity in said State of Michigan in which a decision can be had, said judgment was by said supreme court of the State of Michigan affirmed, all of which will more fully appear by an authenticated transcript of the record in said case, herewith filed.

And the said Samuel A. Walling, plaintiff in error, says that in the rendering of said judgment error intervened to his prejudice, as will appear by said record, and that among the errors so intervening are the following:

1. The act under which said conviction was obtained, and which is the foundation of said judgment (act number 226 of the session laws of the State of Michigan, being sections 1277–1280, Howell's Statutes) is in conflict with paragraph three of section eight of article one of the Constitution of the United States.

2. The said act is in conflict with paragraph two of section ten of article one of the Constitution of the United States.

3. The said act is in conflict with paragraph one of section two of article four of the Constitution of the United States.

47 4. Other errors apparent upon the record.

5. Further errors apparent upon the record.

Wherefore he prays that said judgment may be reversed.

SAMUEL A. WALLING,
Plaintiff in Error.

POWERS AND OXENFORD,
Attorneys for Plaintiff in Error.

48 [Endorsed:] Supreme Court of the United States. Samuel A. Walling, pl'ff in error, *vs.* The People of the State of Michigan. Assignment of errors. Filed Aug. 14, 1884. Chas. C. Hopkins, clerk supreme court of Michigan. Powers & Oxenford, attorneys for pl'ff in error.

49 UNITED STATES OF AMERICA, *ss*:

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between the people of the State of Michigan and Samuel A. Walling, defendant and appellant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause [of the] Constitution,
50 or of a treaty or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Samuel A. Walling, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly, and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of April, in the year of our Lord one thousand eight hundred and eighty-four.

WALTER S. HARSHA,
Clerk of the Circuit Court for Eastern District of Michigan.

Allowed by: THOMAS M. COOLEY,
Chief Justice Supreme Court of Michigan.

51 To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto attached.

August 20th, 1884.

[SEAL.] CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

[Endorsed:] Filed April 14, 1884. Chas. C. Hopkins, clerk sup. ct. of Michigan.

52 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
vs.
SAMUEL A. WALLING, Defendant & Appellant.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the above and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, as appears of record and on file in my office; that I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, the citation with proof of service, copy of the bond to the adverse party, filed with the writ of error, the bond to the clerk of the Supreme Court of the United States duly approved, and the assignment of errors by the plaintiff in error in the Supreme Court of the United States.

That at the time the said writ of error was served upon me there was lodged with me for the adverse party a copy ot such writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this twentieth day of August, A. D. 1884.

[SEAL.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: Michigan supreme court. No. 1137. Samuel A. Walling, plaintiff in error, *vs.* The People of the State of Michigan. Filed 20th October, 1884.

1137

The Supreme Court

OF THE UNITED STATES.

OCTOBER * TERM, * 1884.

SAMUEL A. WALLING,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

Original No. 1137

MOTION TO ADVANCE CASE ON DOCKET.

And now comes the said Plaintiff in Error, Samuel A. Walling, by O. W. Powers, his Attorney, and moves the court now here, to advance said cause on the docket of said court, in accordance with the rules and practice of said court, for the reason that said cause is a criminal case, as appears by the record of said cause now on file in said court.

O. W. POWERS,
Attorney for Plaintiff in Error.

STATEMENT.

I.

The legislature of Michigan, at its session in 1875, passed an act which is found on page 271 of the Session laws of that year, which is entitled and reads as follows:

AN ACT to impose a tax on the business of selling spirituous and intoxicating, malt, brewed, and fermented liquors in the State of Michigan to be shipped from without this State.

SECTION 1. *The People of the State of Michigan* enact: That every person who shall come into, or being in this State, shall engage in the business of selling spirituous and intoxicating, malt, brewed, or fermented liquors to citizens or residents of this State, at wholesale, or of soliciting or taking orders from citizens or residents of this State for any such liquors, to be shipped into this State, or furnished, or supplied at wholesale to any person within this State, not having his, their or its principal place of business within this State, shall, on or before the fourth Friday of June in each year, pay a tax of three-hundred dollars if engaged in selling, or soliciting, or taking orders for the sale of such spirituous and intoxicating liquors and one-hundred dollars for malt, brewed, or fermented liquors. Such tax shall be paid to the Auditor General and be by him paid into the State treasury, to the credit of the general fund.

SEC. 2. Upon the payment of such tax, the Auditor General shall issue to such person a receipt therefor, and in case of loss thereof, a duplicate, when required by the person to whom the original receipt was issued. Every person making such sales, or soliciting, or taking orders, as in the first section of this act provided, shall exhibit such receipt to every person to whom he makes sale, or from whom he takes or solicits orders for such liquors, and shall exhibit such receipt to any supervisor, justice of the peace, sheriff, under sheriff or deputy sheriff, city or village marshal, chief of police, policeman, or constable, when required so to do, during business hours.

SEC. 3. Any person liable to pay any tax under this act, who shall sell any liquors, or solicit, or take orders for liquors to be shipped from without this State to any person, within this State, furnished or supplied by a person, copart-

nership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, without the tax herein provided for having been paid, and having in his possession and exhibiting the receipt therefor, or a duplicate thereof; and any person residing or being in this State; who shall purchase liquors from a person liable to pay a tax under this act, who has not paid such tax, or shall give an order for liquors to such person liable to pay a tax under this act, which order is to be filled, and such liquors are to be shipped from without this State to a person within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in or having his, their, or its principal place of business within this State, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one-hundred dollars; and in default of payment thereof shall be imprisoned not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the Court.

SEC. 4. Selling at wholesale shall be deemed to mean and include all sales of such spirituous and intoxicating, malt, brewed or fermented liquors, in quantities of five gallons or over, or one dozen quart bottles or more, or soliciting orders therefor at any one time of any one person.

II.

Cavanaugh & Co., are wholesale liquor dealers of Chicago They have no place of business in Michigan. In th ir employ is the Respondent, Samuel A. Walling. His business is to solicit and take orders from citizens and residents of this State, for spirituous and intoxicating liquors which are shipped at wholesale into the State by Cavanaugh & Co., and from without this State, to the persons giving the order.

On June 1, 1883, the Respondent had not paid the tax required by the statute, and consequently had no receipt for the same. On that day, at the city of Grand Rapids, he solicited and obtained from Chapin Pease, a resident of that city, an order for one barrel of whisky,

which was to be shipped to Pease, at the city of Grand Rapids, by Cavanaugh & Co., from the city of Chicago. The goods were shipped, as ordered, and Pease paid Cavanaugh & Co. for the same.

The respondent was arrested, convicted and sentenced in the police court at Grand Rapids. He appealed his case to the Kent county circuit court, and was again convicted. He then carried his case to the Supreme Court of the State of Michigan, which is the highest court of law or equity in that State, and the judgment of the court below was affirmed and the lower court directed to proceed to judgement.

The case was then removed to this court, on error, it being claimed that the act in question is repugnant to the provisions of the constitution of the United States, and the Supreme Court of Michigan having decided that the act is not in conflict with the United States constitution.

III.

The act under consideration is claimed to be repugnant to the provisions of the constitution of the United States for the following reasons.

A—It grants greater privileges to the citizens and residents of Michigan, than to residents of sister States.

B—It discriminates in favor of Michigan Products and against the products of other States.

C—By taxing commercial agents who sell at wholesale liquors to be shipped from without the State, to citizens or residents within the State, and not taxing men acting for wholesalers whose place of busines is within the State, the legislature interfered with the power vested in congress to regulate commerce among the several States.

IV.

This motion is made to advance this case on the docket of this court, in accordance with paragraph 4 of rule twen-

ty-six of this court, which provides that criminal cases may be advanced, by leave of the court, on motion of either party. The reason for moving to advance this cause being that it is a criminal case.

The defendant in error has waived all notice of the hearing of this motion, as appears by stupalation on file.

V.

The Supreme Court of the United States.

OCTOBER * TERM, * 1884.

THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

ads

SAMUEL A. WALLING,
Plaintiff in Error,

In the above cause, it is hereby stipulated and agreed by and between the above named parties, by their respective attorneys and counselors, that a motion to advance said cause on the docket of said court, may be heard without further notice. It being hereby intended to waive all notice as to said motion.

It is also stipulated and agreed that said cause is a criminal case and proper to be advanced under the rules and practice of said court, and that the same may be advanced.

O. W. POWERS,
Attorney and Counsel for Plaintiff in Error.

J. J. VAN RIPER,
Attorney and Counsel for Defendant in Error.

116-446

SUPREME COURT
OF THE
UNITED STATES.

Supreme Court U. S.
FILED.
NOV 24 1884
JAMES H. McKENNEY,
CLERK.

116-446

OCTOBER TERM, 1884.

SAMUEL A. WALLING,
Plaintiff in Error,

vs

THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

ORIGINAL NUMBER
1137.

Error to the Supreme Court of the State of Michigan.

Brief for Plaintiff in Error.

O. W. POWERS,
Attorney for Plaintiff in Error.

J. J. VAN RIPER,
Attorney General of Michigan,
For Defendant in Error.

KALAMAZOO, MICH.:
DAILY GAZETTE BOOK AND JOB DEPARTMENT.
1884.

SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1884.

SAMUEL A. WALLING,
Plaintiff in Error,

vs

THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

ORIGINAL NUMBER
1137.

Brief for Plaintiff in Error.

STATEMENT.

I.

The sole question that arises in this case, is whether a certain statute of the State of Michigan is repugnant to the provisions of the Constitution of the United States.

The act in question was passed by the legislature of Michigan, at its session in 1875, and it may be found on page 271 of the Session Laws of that year. It is entitled and reads as follows:

AN ACT to impose a tax on the business of selling spirituous and intoxicating, malt, brewed, and fermented liquors in the State of Michigan to be shipped from without this State.

SECTION 1. *The People of the State of Michigan* enact: That every person who shall come into, or being in this State, shall engage in the business of selling spirituous and intoxicating, malt, brewed, or fermented liquors to citizens or residents of this State, at wholesale, or of soliciting or taking orders from citizens or residents of this State for any such liquors, to be shipped into this State, or furnished, or supplied at wholesale to any person within this State, not having his, their or its principal place of business within this State, shall, on or before the fourth Friday of June in each year, pay a tax of three-hundred dollars if engaged in selling, or soliciting, or taking orders for the sale of such spirituous and intoxicating liquors and one-hundred dollars for malt, brewed, or fermented liquors. Such tax shall be paid to the Auditor General and be by him paid into the State treasury, to the credit of the general fund.

SEC. 2. Upon the payment of such tax, the Auditor General shall issue to such person a receipt therefor, and in case of loss thereof, a duplicate, when required by the person to whom the original receipt was issued. Every person making such sales, or soliciting, or taking orders, as in the first section of this act provided, shall exhibit such receipt to every person to whom he makes sale, or from whom he takes or solicits orders for such liquors, and shall exhibit such receipt to any supervisor, justice of the peace, sheriff, under sheriff or deputy sheriff, city or village marshal, chief of police, policeman, or constable, when required so to do, during business hours.

SEC. 3. Any person liable to pay any tax under this act, who shall sell any liquors, or solicit, or take orders for liquors to be shipped from without this State to any person, within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, without the tax herein provided for having been paid, and having in his possession and exhibiting the receipt therefor, or a duplicate thereof; and any person residing or being

in this State; who shall purchase liquors from a person liable to pay a tax under this act, who has not paid such tax, or shall give an order for liquors to such person liable to pay a tax under this act, which order is to be filled, and such liquors are to be shipped from without this State to a person within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in or having his, their, or its principal place of business within this State, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one-hundred dollars; and in default of payment thereof, shall be imprisoned not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the Court.

SEC. 4. Selling at wholesale shall be deemed to mean and include all sales of such spirituous and intoxicating, malt, brewed or fermented liquors, in quantities of five gallons or over, or one dozen quart bottles or more, or soliciting orders therefor at any one time of any one person.

II.

Cavanaugh & Co., are wholesale liquor dealers of Chicago, in the State of Illinois They have no place of business in Michigan. In their employ, as traveling salesman, is the Respondent, Samuel A. Walling. His business is to solicit and take orders from citizens and residents of this State, for spirituous and intoxicating liquors which are shipped at wholesale into the State by Cavanaugh & Co., and from without this State, to the persons giving the order.

On June 1, 1883, the Respondent had not paid the tax required by the statute, and consequently had no receipt for the same. On that day, at the city of Grand Rapids, in the State of Michigan, he solicited and obtained from one Chapin Pease, a resident of that city, an order for one barrel of whisky, which was to be shipped to Pease, at the city of Grand Rapids, in the State of Michigan, by

Cavanaugh & Co., from the city of Chicago, in the State of Illinois. The goods were shipped, as ordered, and Pease paid Cavanaugh & Co. for the same.

The plaintiff in Error was arrested, and tried, convicted and sentenced, in the police court of the city of Grand Rapids. Under the laws of Michigan, he was entitled to appeal to the Circuit Court for the County of Kent, in the State of Michigan, within which county the city of Grand Rapids is situated. Accordingly, he took his appeal was again tried, and again convicted. He then carried his case, upon exceptions before sentence, to the Supreme Court of the State of Michigan, which is the highest court of law or equity within that state. In the Supreme Court of Michigan, he urged, as he had in the lower courts, that the statute in question was repugnant to the provisions of the Constitution of the United States, and that he had committed no crime or misdemeanor. The Supreme Court of Michigan decided that the statute is not repugnant to the provisions of the United States Constitution, affirmed the judgment of the Kent Circuit Court, and directed that court to proceed to judgment. Thereupon a writ of error was sued out from this court and the case is here for review.

III.

To properly understand this case, it is perhaps well, at this point, to call attention to another statute of the State of Michigan with reference to the liquor traffic, and which the defendant in error insists has some bearing upon the matter in controversy. This latter statute is entirely independent of the one under which the plaintiff in error was arrested and convicted. It was passed in 1879, and amended in 1881. It may be found in Howell's Annotated Statutes of Michigan, on page 378.

"(Sec. 1,281.) SECTION 1.—In all townships, cities and villages of this State there shall be paid annually the following tax upon the business of manufacturing, selling or keeping for sale, by all persons whose business, in whole or in part, consists in selling or keeping for sale or manufacturing distilled or malt liquors, or mixed liquors, as follows: Upon the business of selling or offering for sale spirituous or intoxicating liquors, or mixed liquors, by retail, or any mixture or compound, excepting proprietary patent medicines, which in whole or in part consists of spirituous or intoxicating liquors, the sum of three hundred dollars per annum; upon the business of selling or offering for sale, by retail, any malt, brewed or fermented liquors, two hundred dollars per annum; upon the business of selling brewed or malt liquors at wholesale, or at wholesale and retail, two hundred dollars per annum; upon the the business of selling spirituous or intoxicatins liquors at wholesale, or at wholesale and retail, five hundred dollars per annum; upon the business of manufacturing brewed or malt liquors for sale, if the quantity manufactured be less than fifteen hundred barrels, sixty-five dollars per annum, and twenty-five dollars upon each additional thousand barrels, or part thereof; upon the business of manufacturing for sale spirituous or intoxicating liquors, five hundred dollars per annum. No person paying a tax on spirituous or intoxicating liquors, under this act, shall be liable to pay any tax on the sale of malt, brewed or fermented liquors. No person paying a manufacturer's tax on brewed or malt liquors, under this act, shall be liable to pay a wholesale dealer's tax on the same.

IV.

THE ASSIGNMENT OF ERROR.

UNITED STATES OF AMERICA—SUPREME COURT.

SAMUEL A. WALLING,
Plaintiff in Error.
vs.
THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

Now comes the said Samuel A. Walling, plaintiff in error, and for assignment of errors herein says that at the June term, A. D. 1883, of the Circuit Court for the County of Kent, in the State of Michigan, in which the said People of the State of Michigan was plaintiff, and said Samuel A. Walling was respondent, a judgment of conviction was rendered against him, said Samuel A. Walling, in favor of the said People, for a violation of Act number two hundred and twenty-six of the session laws of 1875 of the State of Michigan.

And the said Samuel A. Walling, plaintiff in error, represents furthermore that at the April term, A. D., 1884, of the Supreme Court of the State of Michigan, which is the highest court of law and equity is said State of Michigan in which a decision can be had, said judgment was, by said Supreme Court of the State of Michigan, affirmed; all of which will more fully appear by an authenticated transcript of the record in said case, herewith filed.

And the said Samuel A. Walling, plaintiff in error, says that in the rendering of said judgment error introvened to his prejudice, as will appear by said record, and that among the errors so intervening are the following:

1. The act under which said conviction was obtained, and which is the foundation of said judgment, (Act number 226 of the session laws of 1875 of the State of Michigan,

being sections 1,277-1,280, Howell's Statutes,) is in conflict with Paragraph three of Section eight of Article one of the Constitution of the United States.

2 The said act is in conflict with Paragraph two of Section ten of Article one of the Constitution of the United States.

3. The said act is in conflict with Paragraph one of Section two of Article four of the Constitution of the United States.

4. Other errors apparent upon the record.

5. Further errors apparent upon the record.

Wherefore he prays that said judgment may be reversed.

SAMUEL A. WALLING,
Plaintiff in Error.

POWERS & OXENFORD,
Attorneys for Plaintiff in Error.

V.

THE POINTS IN CONTROVEYSY.

The assignments of errors may be summarized in the claim that we make, that the act in question, and under the provisions of which the plaintiff in error was arrested, is repugnant to the provisions of the Constitution of the United States.

A.—It grants greater privileges to the citizens and residents of Michigan than to those of sister states.

B.—It discriminates in favor of Michigan products and against the products of other states.

C.—By taxing commercial agents who sell at wholesale liquors to be shipped from without the state, and not tax-

ing men acting for wholesalers whose place of business is within the state, the State of Michigan interferes with the power vested in Congress to regulate commerce among the several states.

The United States Constitution contains the following provisions:

"*The Congress shall have power: To regulate commerce with foreign nations, and among the several States, &c.*" *See Sec.* 8, *Art.* 1, *par.* 3.

"*The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.*" *See Sec.* 2, *Art.* 4. *par.* 1.

"*No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.*" *See Sec.* 10, *Art.* 1, *par.* 2.

VI.

The position of the defendant in error, as we understand it, is:

First: That the tax imposed is upon the person soliciting, who may be a resident or non-resident, and not upon the party resident in another state who ships the goods.

Second: That the act does not attempt to regulate commerce, but it simply taxes an occupation.

Third: That there is no discrimination in favor of Michigan, for the reason that the act in question does not tax non-residents as heavily as are Michigan wholesalers by the act referred to, which taxes wholesalers whose place of business is within the state.

VII.

Does the act in question discriminate in favor of our own citizens and against the citizens of the Sister States, and does it discriminate in favor of Michigan products?

It would seem that this question must be answered in the affirmative.

Every agent soliciting orders for liquors to be shipped from without the state must pay an annual license fee. The Michigan wholesaler may put a thousand representatives on the road if he desires and no license is required; while the Chicago wholesaler must obtain a separate license for each individual man. A Michigan wholesaler may import into the state as much liquor as he chooses, or he can manufacture any amount that he pleases, and upon the road he may put a small army of men to sell and solicit orders, and he pays no tax upon the business of soliciting orders. He may pay a state tax of three to five hundred dollars upon the business of wholesaling, but he pays no tax upon the business of soliciting orders at wholesale. His men may travel from place to place unmolested, while the representative of a competitor from a sister state must, whenever it shall please the will of constables, policemen, marshals, sheriffs, mayors, supervisors and justices, exhibit his receipt and make proof that he has paid his state tax. The representative of the Michigan house may meet a customer and at once proceed to business, while the proscribed foreigner must first draw from his pocket his state receipt and call the attention of his customer to the fact that he has paid his tax. Failing to do this, which the law does not require of the Michigan drummer, he becomes a criminal and a victim to the ever zealous officer dependant for a living upon his fees. The customers of the Michigan man run no risk of being arrested when they give an order.

The customer of the interloper from another state buys at his peril, for if, perchance, the agent forgets to exhibit his receipt or has neglected to pay his tax, his customer is guilty of a misdemeanor. He ought not, says the law, to take any chances by buying of a foreigner. The power is placed in the hands of the Michigan wholesalers who desire to do so, to make the life of the foreigner who solicits orders for his house exceedingly unpleasant. He can, through friendly officers, keep him exhibiting his receipt, and for failure so to do cause his arrest, conviction, fine and perhaps imprisonment. He can keep him continually in the clutches of the law and gain more and more of the trade to himself. This law was carefully prepared in the interest of Michigan wholesalers, and for the express and only purpose of driving out competition from other states. The law was not framed in the interest of temperance, and it does not come within the police power of the state. The law cannot be justified as an act within the police power of the State, for, police laws are uniform, they create no favored classes, they do not say that the citizens of Michigan shall have greater rights and be subject to less annoyance than the citizens of Illinois.

As to the point made by the defendant in error, that there is another statute which taxes the wholesalers of Michigan, we call attention to the fact that when the Michigan wholesaler has once paid his tax, he may put as many salesman upon the road as he desires and the tax is no larger, while the wholesaler from another State must pay a tax for every man upon the road. Moreover, there is nothing in the law to protect the wholesaler from another State from being compelled to pay, not only the tax required by the statute that we are considering, but, also, the tax required by the other statute to which we have referred.

VIII.

Provisions of the United States Constitution Considered.

The clause of the Federal Constitutiou that say that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, has been held by this Court, to relieve citizens from, the disabilities of alienage in other States." It inhibits discriminating legislation against them by other States.

It insures to them in other States the same freedom, privileges and immunities possessed by the citizens of those States in the acquisition and enjoyment of property, and secures to them the equal protection of their laws in their lawful pursuits.

Paul vs. Virginia, 8 Wall., 168.
Ward vs. Maryland, 12 Wallace, 418.

The Supreme Court of Minnesota in passing upon this clause of the Federal Constitution, in the case of Davis vs. Pierce, (7 Min., 13), said:

"The main object of this clause was to prevent each State from discriminating in favor of its own people, or against those of any other. It secures not only absolute equality of rights and privileges with every citizen of each State, but all such privileges and immunities in any State as are by the laws and constitntion thereof secured and extended to her own people of the same class."

To the same effect is State vs. Kate Marsh, and State vs. McGinnis, 37 Ark., 356, 362.

And with regard to the "Commerce clause" of the Unitsd States Constitution, the United States Supreme Court has used this language:

"The power of the national government over commerce with foreign nations and among the several states, is broad and comprehensive. It reaches the interior of every State

in the union, so far as it may be necessary to protect the products of other States and countries from discrimination by reason of their foreign origin.

Brown vs. Maryland, 12 Wheaton, 419.

Guy vs. Baltimore, 100 U. S., 443.

IX.

A Review of the Authorities Sustaining the Position of the Plaintiff in Error.

There is plenty of anthority to sustain the argument that we make. Statutes similar to the one that we are considering have several times been before this Court, and the courts of last resort of several of the States, and the law says that State legislatures must not discriminate in favor of their own citizens, and must not intermeddle with commerce between the States. Judge Cooley in his work upon Constitutional limitations, (p. 16), sustains the principle for which we contend, and in Cooley on Taxation, (p. 64), the learned auther uses this language: "The constitution provides, that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. Among these privileges and immunities is that of being exempt in other States from higher taxes or impositions than are paid by the citizens of such other States. Under this provision, while it is entirely admissable to levy taxes upon the business or property of non-resident traders within the State, it is not competent to require them to take out a license and to pay therefor a sum greater than that demanded of residents."

We shall proceed and consider some of the cases in point, and which have been before this Court.

In Hinson vs. Lott, (8 Wallace, 148) this Court had before it a statute of Alabama, which provided:

"Before it shall be lawful for any dealer or dealers in spirituous liquors to offer any such liquors for sale within the limits of this State, such dealer or dealers *introducing any such liquors into the State for sale* shall first pay the tax collector of the county into which such liquors are introduced, a tax of *fifty cents per gallon upon each and every gallon thereof.*"

Mr. Justice Miller in delivering the opinion of the Court said:

"If this section stood alone in the legislation of Alabama on the subject of taxing liquors, the effect of it would be that all such liquors brought into the State from other States, and offered for sale, whether in the original casks in which they came into the State, or by retail in smaller quantities, would be subject to a heavy tax, while the same class of liquors manufactured in the State would escape the tax. It is obvious that the right to impose any such discriminating tax, if it exist at all, cannot be limited in amount, and that a tax under the same authority can be readily laid which would amount to an absolute prohibition to sell liquors introduced from without, while the privilege would remain unobstructed in regard to articles made in the State. If this can be done in reference to liquors, it can be done with reference to all the products of a sister State, and in this mode one State can establish a complete system of non-intercourse in her commercial relations with all the other States of the union."

The court, however, held the section constitutional, as other sections of the same act impose a tax of fifty cents per gallon on all liquors manufactured within the State.

Commenting upon this case, this court, in Guy vs. Baltimore, (100 U. S., 438), says: "We upheld the statute upon the ground that it did not discriminate against the products of other States, and only subjected them to the

upon the foreign character of the articles, that is, upon their having been manufactured without the State, it is to that extent a regulation of commerce in the articles between the States. It matters not whether the tax be laid directly upon the articles sold or in the form of licenses for their sale. If, by reason of their foreign character, the State can impose a tax upon them or upon the person through whom the sales are effected, the amount of the tax will be a matter resting in her discretion; she may place the tax at so high a figure as to exclude the introduction of the foreign article. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several States."

In Guy vs. Baltimore, (100 U. S., 443), this Court quite effectually disposed of the subtle argument that the State, under the guise of its police powers, has the right to pass an act conflicting with the Federal Constitution. We quote what the Court says:

"In the exercise of its police powers a State may exclude from its territory or prohibit the sale therein of any articles which, in its judgment, fairly exercised, are prejudicial to the health, or which would endanger the lives or property of its people. But if the State, under the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles of that kind that may be produced or manufactured in other States, the Courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States."

X.

Some of the Decisions of our State Courts Considered.

In Daniels vs. Richmond, (78 Ky., 544). The Court of Appeals of Kentucky, held that a provision of the char-

ter of the town of Richmond authorizing a tax of five per cent. upon all sales made by auctioneers, except such as are made by citizens of the town or county who are *bona fide* owners of the property sold, discriminates against citizens of other States and is unconstitutional. In its opinion the Court uses this language:

"But it is contended that these assessments constitute but a tax upon an occupation which the State may rightfully authorize, and are therefore not within the objection urged to them. But we cannot discover the real difference between a tax upon the sale of an article and a tax upon the article itself. It needs no argument in this country, filled with tariff discussions, to demonstrate that the burden is bound, finally, to fall upon the owner or consumer of the article."

Referring to the following cases, viz:

Norris vs. Boston, 4 Met., 282, 293, and 7 How., 283.

Gibbons vs. Ogden, 9 Wheaton, 1.

Brown vs. Maryland, 12 Wheaton, 419.

State Freight Tax Case, 15 Wall., 232.

Welton vs. Missouri, 91 U. S., 275, 282.

Railroad Co. vs. Husen, 95 U. S., 465.

The Supreme Court of Massachusetts, in Higgins vs. 300 Casks of Lime, (130 Mass., 1), said: "The result of all these decissions is, that the several States have no authority to prescribe different regulations in relation to the commerce in certain articles, dependent upon the State from which they are brought. This rule in no manner controls or limits the power of a State to enact appropriate health or inspection laws: for such laws are necessarily uniform, and are not dependant upon place."

In State vs. Furbush, (72 Maine, 495), construing a statute of Maine, the Supreme Court of that State says:

The act is unconstitutional. "It allows goods manufactured in this State to be peddled free, and exacts a license fee from those who peddle similar goods which are manufactured out of the State." * * * "such legislation is an interference with the power vested in congress to regulate commerce."

An act of the legislature of Lousiana of 1880, imposed a license tax of $25 per month upon all traveling agents from other States, offering any species of merchandise for sale or selling the same. This act came before the Supreme Court of Louisiana in the case of McGuire vs. Parker, (32 La. An., 832), the court in the course of its decision says:

"The increased Inter-State trade and commerce of late years has developed a class of business men, now recognized as a distinct profession or calling, known and designated as 'commercial or traveling agents,' who travel throughout the different States as representatives of commercial houses, and sell goods and merchandise by orders. This class of agents is made the subject of legislation by the section of the statute referred to. Some of them are citizens of the State, some of other States."

"The section in question imposes a license of $25 a month on 'traveling agents from other States,' but exacts no license tax upon the same class of persons who are citizens of this State. * * Does this violate the provisions of the Federal Constitution, which declares that 'the citizens of each State shall be entitled to the privileges and immunities of the citizens of the several States.'"

"Privileges and immunities are synonymos terms. Privilege, signifies a peculiar advantage, exemption, immunity; Immuuity signifies exemption, privilege."

"When we consider the meaning of these terms, and reflect upon the important object to be accomplished by this constitutional provision, so essential, not only to unre-

stricted trade and intercourse between States, but even to the liberties and highest privileges of the citizens of a common country, we are bound to conclude that a requirement of a State law that discriminates so glaringly against citizens of other States and in favor of the citizens of our own State, is designed to defeat the objects and purposes which this wise constitutional provision was intended to secure, and therefore, violates the spirit of the clause invoked."

The Supreme Court of New Hampshire, in Pierce vs. The State, (13 N. H., 582), used this language: "The States can act only within the scope of the powers reserved. Should an attempt be made by State to prohibit the sale of imported iron, or salt, or sugar, or cotton goods, within its limits, or to tax articles, the produce of another State, beyond the rate of similar articles produced within its own borders, it would very readily be seen that such legislation was not a regulation of internal police merely, but that its design, and its effect, if admitted, must be the regulation of foreign commerce, or commerce among the States, also. It would not have for its object merely the internal trade of the State, as such, but it would be an act relating to that trade in its connection with a commerce beyond the limits of the State, with a view to affecting, and to some extent regulating, the latter also. One of the ends to be accomplished, would be the limitation of such external commerce. Whether an act, professing to regulate merely the sale of such articles, would come within the same condemnation, must depend upon its particular provisions and operation, and the objects to be accomplished by it. Should a State pass a law requiring only the vendors of spirituous liquors manufactured elsewhere to procure a license, the obvious object and effect of it would be to give a preference to the means of drunkenness produced within its own limits, and to exclude so far as such a regulation might do so, compe-

tition from abroad. It could not be regarded as a law intended to promote habits of temperance, and thus prevent the commission of crime."

Lastly, we have the opinion of the Michigan Supreme Court, upon the very points involved, in the case of Cransom vs. Smith, (37 Mich., 311). This court there said: "When any right or privilege is subject to the regulation of congress, it is not competent for State laws to impose conditions which shall interfere with the rights or diminish their value."

See also, as sustaining our position, in addition to the authorities already cited.

Re Rudolph, 6 Sawyer Ct., 295.
State vs. North, 27 Mo., 467.
State vs. Browning, 62 Mo., 591.
County of Mobile vs. Kimball, 102 U. S., 691.
Wiley vs. Parmer, 14 Ala., 627.
Scott vs. Watkins, 23 Ark., 556, 564.
Oliver vs. Washington Mills, 11 Allen, 268.

It seems to us that the invalidity of the act under consideration, has been plainly shown by the authorities to which reference has been made.

We insist that judgment should be given in favor of the plaintiff in error.

O. W. Powers

Attorney and Counsel for Plaintiff in Error.

Kalamazoo, Mich., Nov. 20, 1884.

APPENDIX TO BRIEF.

PEOPLE vs. WALLING.

Filed April 9, 1884.

Exceptions from Kent.

J. J. Van Riper, for the People. Powers & Oxenford, for defendant.

SHERWOOD J. The defendant was prosecuted under act 226, Sess. Laws 1875, (being sections 1275–1277, How. St.,) for soliciting and taking orders from citizens of this state for spirituous and intoxicating liquors to be shipped into this state and furnished and supplied at wholesale by a copartnership not a resident of this state, nor having its principal place of business therein, without having first paid the tax required by said act. The defendant based his defense upon the unconstitutionality of the statute, which reads as follows:

"SECTION 1. *The People of the State of Michigan* enact: That every person who shall come into, or being in this State, shall engage in the business of selling spirituous and intoxicating, malt, brewed, or fermented liquors to citizens or residents of this State, at wholesale, or of soliciting or taking orders from citizens or residents of this State for any such liquors, to be shipped into this State, or furnished, or supplied at wholesale to any person within this State, not having his, their or its principal place of business within this State, shall, on or before the fourth Friday of June in each year, pay a tax of three-hundred dollars if engaged in selling, or soliciting, or taking orders for the sale of such

spirituous and intoxicating liquors and one-hundred dollars for malt, brewed, or fermented liquors. Such tax shall be paid to the Auditor General and be by him paid into the State treasury, to the credit of the general fund.

"SEC. 2. Upon the payment of such tax, the Auditor General shall issue to such person a receipt therefor, and in case of loss thereof, a duplicate, when required by the person to whom the original receipt was issued. Every person making such sales, or soliciting, or taking orders, as in the first section of this act provided, shall exhibit such receipt to every person to whom he makes sale, or from whom he takes or solicits orders for such liquors, and shall exhibit such receipt to any supervisor, justice of the peace, sheriff, under sheriff or deputy sheriff, city or village marshal, chief of police, policeman, or constable, when required so to do, during business hours.

"SEC. 3. Any person liable to pay any tax under this act, who shall sell any liquors, or solicit, or take orders for liquors to be shipped from without this State to any person, within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, without the tax herein provided for having been paid, and having in his possession and exhibiting the receipt therefor, or a duplicate thereof; and any person residing or being in this State; who shall purchase liquors from a person liable to pay a tax under this act, who has not paid such tax, or shall give an order for liquors to such person liable to pay a tax under this act, which order is to be filled, and such liquors are to be shipped from without this State to a person within this State, furnished or supplied by a person, copartnership, association, or corporation, not resident in or having his, their, or its principal place of business within this State, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one-hundred dollars; and in default of payment thereof, shall be imprisoned not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the Court.

"SEC. 4. Selling at wholesale shall be deemed to mean and include all sales of such spirituous and intoxicating,

malt, brewed or fermented liquors, in quantities of five gallons or over, or one dozen quart bottles or more, or soliciting orders therefor at any one time of any one person.

Defendant claims and insists that this act is in conflict with paragraph 3 of section 8 and 10, art. 1, and paragraph 2 of section 2, art. 4, of the federal constitution. Defendant also claims that this statute violates section 47 of article 4 of the constitution of this state, for the reason that it licenses the sale of spirituous liquors, which was prohibited by that section when the statute was enacted, but since that time repealed. The cause was first tried before Judge HOLMES, in police court at Grand Rapids. The defendant was convicted, and required to pay a fine of $25 and costs of prosecution. On appeal to the circuit court, a trial was there had by a jury before Judge MONTGOMERY, and the respondent was again convicted.

The case now comes before us on error, the record containing a bill of exceptions. The constitutional questions raised upon the record were those discussed before us on the hearing, and will only be considered by this court. The imposition of the tax upon the business of selling intoxicating liquor is not a license, and is not a violation of the constitution of our state, as supposed by counsel for defendant. The business contemplated by the statute is selling liquors to residents of this state, which are to be supplied from manufacturers out of the state. The statute does not create or authorize the business, but rather assumes its existence, (whether lawful or not, can make no difference,) and, viewing the traffic with disfavor, the legislature of Michigan, as has the law-making power of every civilized state and nation during the last hundred years, by resort to the police power sought in various ways to prevent and restrain, by its enactments, the evil effects upon the state and society. The statute under consideration belongs to this class of legislation. Its object was to curtail the

traffic, show legislative disapproval, and to a certain extent provide revenue to aid in ameliorating the evils which the trade has never failed to entail upon the community. It was for these purposes the tax upon the business was authorized, and for the enforcement of its collection the penalty in this case was imposed. Under the decision of this court the law is not in conflict with our constitution. Youngblood v. Sexton, 32 Mich., 406; Kitson v. Mayor of Ann Arbor, 26 Mich., 325.

The constitution of the United States, in section 8, art. 1, § 3, provides that congress shall have power to regulate commerce with foreign nations and among the several states, and council claim the statute is obnoxious to this provision of the federal constitution. I have failed to discover the conflict claimed. The question of foreign commerce is not involved in this case; the constitutional provision relating to commerce between states only is invoked. The statute does not prohibit the introduction and sale of liquors made outside the state. It simply taxes the person who carries on the business here by making sales in this state. It in no way interferes with the introduction of the liquors here. It tolerates and regulates, but seeks not to prohibit. I think in this case no question can be successfully made under this clause of the constitution until the point has been reached where regulation ceases and prohibition begins. A state may pass all such laws as she may deem necessary or desirable for the safety, health or morals of her people, and may use whatever means she may think proper to that end, provided she does not antagonize any law of congress. Com. v. Kimball, 24 Pick. 363; License Cases, 5 How., 575.

The use of intoxicating liquor, from the earliest ages, has ever been regarded as a thing not to be encouraged. The ancients used wine in its simplest form, but since the

discovery of alcohol it has required all the power the government can exert to regulate and control its demoralizing effects. The train of evils which marks the progress of intemperance through the later years is too obvious to require comment. "It brings with it degredation of character, impairs the moral and physical energies, wastes the health, increases the number of orphans, paupers, insane and criminals, undermines the morals, and smites its victims to the lowest depths of vice and profligacy." The excessive use of the article has always fallen under universal condemnation, and its use has long been so closely connected with its abuse as to render legal prohibition or regulation absolutely necessary for the protection of society. Prohibition has been tried in this state. Failing, however, to accomplish the result desired, the people have resorted to the more usual means of regulation and taxation, and which clearly come within the proper exercise of the police power of the state. State legislation taxing the sale of intoxicating liquors has been held valid and constitutional, under the police powers of the state, in every state where the question has been raised, and by the supreme court of the United States. Bartemyer v. Iowa, 18 Wall., 129; License Cases, 5 How , 504; Gibbons v. Ogden, 9 Wheat., 205; Passenger Cases, 7 How., 283.

In this case taxation alone is under consideration. The importation and its sale in this state are in no manner abridged. The outside manufacturer's agent is entitled to all the rights and privileges that are secured to the resident of the state. In fact, this statute is more favorable to him than the resident manufacturer. The former, selling or soliciting the sale of intoxicating liquors at wholesale, to be shipped to this state, is required to pay a tax of $300, and $100 for malt, brewed or fermented liquors, (see section 1,277, How. St.;) the latter, who sells intoxicating liquors at wholesale, must pay a tax of $500, and for malt,

brewed or fermented liquors, a tax of $200. How. St., § 1,281.

It seems difficult to discover any unjust discrimination against citizens of other states under the provisions of this act. Woodruff v. Parham, 8 Wall. 123. The tax is against the person who makes the sale, who carries on the business of selling here, and not the dealer who furnishes and ships the goods. It is not a tax upon commerce within the constitutional provision cited; nor does it interfere with any law or right of congress; nor is it an attempt to regulate commerce between this and other states. The right of a state to tax occupations generally is recognized in Brown v. Maryland, 12 Wheat. 444; Nathan v. Louisiana, 8 How. 80; Pierce v. New Hampshire, 5 How. 593; Hinson v. Lott, 8 Wall, 148; Machine Co. v. Gage, 100 U. S. 676.

The third point made against the act is that it contravenes section 2, art. 4, § 1, which reads as follows: "The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states." In commenting upon this clause of the constitution, Chief Justice Cooley, in his work on Taxation, says: "Among these privileges and immunities is that of being exempt in other states from higher taxes or impositions than are paid by the citizens of such other states. Under this provision, while it is entirely admissable to levy taxes upon the business or property of non-resident traders within the state, it is not competent to require them to take out a license, or to pay therefor a sum greater than that demanded of residents." In these views I fully concur; but I am unable to see how they can be made to support the views of counsel for defendant. The right to tax the business or property of the non-resident in this state is fully sustained, and no license is required to be taken. Nothing is required of him that is not required of the resident vendor.

The argument of defendant's counsel, that the non-resident must pay a tax for every servant or agent he may have making sales for him, is specious. There is nothing to prevent the non-resident manufacturer or dealer from engaging in the business of selling, and paying his tax and employing as many servants or agents as he may choose to assist him. It is the person who pays the tax that is permitted to do the business, and is, of course, on his complying with the law, allowed to carry on the business to any extent he chooses, and of course may employ or use the necessary help for that purpose. I do not regard the statute obnoxious to this clause of the constitution. So long as the person paying the tax stands on the same footing as the resident, both as to sales made and quantity sold, there is no discrimination against the non-resident. Guy v. Baltimore, 100 U. S. 438; Ward v. Maryland, 12 Wall. 418.

The remaining point made by defendant's counsel is that the statute violates paragraph 2 of section 10 of article 1 of the constitution, which prohibits the states, without the consent of congress, laying any tax or duties on imports or exports, except such as may be absolutely necessary for executing its inspection laws. The duties referred to in this section relate solely to the duties upon foreign and imported articles, and do not refer to taxes in the nature of those mentioned in this statute, or to special taxes which grow out of the internal police regulations of the state; the terms "imports" and "exports" do not refer to goods brought from one state into another, but only to articles imported from or exported to foreign countries. Brown v. Maryland, 12 Wheat. 454; Woodruff v. Parham, 8 Wall. 123; License Cases, 5 How. 593.

We find no error in the record, and the conviction must be affirmed.

(The other justices concurred.)

THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1884.

THE PEOPLE OF THE STATE OF MICHIGAN,
Defendants in Error,

ads.

SAMUEL A. WALLING,
Plaintiff in Error.

ERROR TO THE ~~CIRCUIT~~ COURT ~~OF THE UNITED STATES FOR THE WESTERN DISTRICT~~ OF MICHIGAN.

BRIEF OF J. J. VAN RIPER,
Attorney General of Michigan, for Defendants in Error.

J. J. VAN RIPER, Attorney General,
For Defendants in Error.

POWERS & OXENFORD,
Attorneys for Plaintiff in Error.

LANSING, MICH.:
W. S. GEORGE & CO., PRINTERS AND BINDERS.
1884.

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF OF J. J. VAN RIPER, ATTORNEY GENERAL OF MICHIGAN, ON BEHALF OF DEFENDANTS IN ERROR.

Plaintiff in error was prosecuted under act 226, session laws of 1875, of the State of Michigan, being Howell's Statutes, sections 1277 to 1280, for soliciting and taking orders from citizens of said State for spirituous and intoxicating liquors to be shipped into said State, to be furnished and supplied at wholesale by a co-partnership not a resident thereof, nor hav-

ing its principal place of business within the same; he, the said defendant, not having first paid the tax therein provided.

The errors alleged go to the constitutionality of the act of 1875, under which this prosecution was brought, and are as follows:

First. That the statute, act 226, laws 1875, is in conflict with paragraph 3, section 8, of article 1 of the constitution of the United States, which gives to Congress among other things the power "To regulate commerce with foreign nations and among the several states, and with the Indian tribes."

Second. It is in conflict with paragraph 2, section 10, of article 1 of said Constitution, which is as follows: No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports, or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress.

Third. It is in conflict with paragraph 1, section 2, of article 4, of the same, which is as follows: The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

The act, under which this prosecution was brought, reads as follows:

(Section 1277) Section 1. The People of the State of Michigan enact, That every person who shall come into, or being in this State, shall engage in the business of selling spirituous and intoxicating malt, brewed or fermented liquors to citizens or residents of this State, at wholesale, or of soliciting or taking orders from citizens or residents of this State for any such liquors, to be shipped into this State, or furnished, or supplied at wholesale to any person within this State, by a person, co-partnership, association, or corporation, not resident in this State, nor having his, their, or its principal place of business within this State, shall, on or before the fourth Friday of June in each year, pay a tax of three hundred dollars if engaged in selling, or soliciting, or taking orders for the sale of such spirituous and intoxicating liquors, and one hundred dollars for malt, brewed, or fermented liquors.

Such tax shall be paid to the Auditor General, and be by him paid into the State treasury, to the credit of the general fund.

1278.—Sec. 2. Upon the payment of such tax the Auditor General shall issue to such person a receipt therefor, and in case of loss thereof, a duplicate, when required by the person to whom the original receipt was issued. Every person making sales, or soliciting, or taking orders, as in the first section of this act provided, shall exhibit such receipt to every person to whom he makes sale, or from whom he takes or solicits orders for such liquors, and shall exhibit such receipt to any supervisor, justice of the peace, sheriff, under or deputy sheriff, city or village marshal, chief of police, policeman, or constable, when required so to do, during business hours.

1279.—Sec. 3. Any person liable to pay a tax under this act, who shall sell any liquors, or solicit or take orders for liquors to be shipped from without this State to any person within this State, furnished or supplied by a person, co-part-

nership, association or corporation not resident in, or having his, their, or its principal place of business within this State without the tax herein provided for having been paid, and having in his possession and exhibiting the receipt therefor, or a duplicate thereof; and any person residing or being in this State who shall purchase liquors from a person liable to pay a tax under this act, who has not paid such tax, or shall give an order for liquors to such person liable to pay a tax under this act, which order is to be filled, and such liquors are to be shipped from without this State to a person within this State, furnished or supplied by a person, co-partnership, association, or corporation, not resident in, or having his, their, or its principal place of business within this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in default of payment thereof shall be imprisoned not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the court.

1280.—Sec. 4. Selling at wholesale shall be deemed to mean and include all sales of such spirituous and intoxicating, malt, brewed, or fermented liquors in quantities of five gallons or over, or one dozen quart bottles or more, or soliciting orders therefor at any one time of any person.

I.

Does this act requiring the payment of the tax therein provided conflict with paragraph 3, section 8, article 1 of the Constitution of the United States, which gives to Congress the power to regulate commerce among the several States?

That legislation of the state, taxing or prohibiting the sale

of intoxicating liquors is not a regulation of commerce, but the exercise of the police power of the State, has been repeatedly settled, not only by the State courts but by the supreme court of the United States.

Com. v. Kimball, 24 Pick., 363.
Bartemeyer v. Iowa, 18 Wall., 129.
License cases 5 How., 504.
Gibbons v. Ogden, 9 Wheat., 205.
Passenger cases 7 How., 283.

In the license cases almost every phase of the liquor question, and the powers of the several States to legislate thereon was fully discussed, and their absolute control over the subject settled by this court.

In considering the questions raised it is important to notice that the tax is not to be levied solely upon non-residents, but "that *every person* who shall *come into or being in this State* shall engage in," etc.

There is, therefore, no unjust discrimination against citizens of other States, but the statute is applicable alike to all persons, *residents or non-residents*, who engage in this particular traffic.

It is true that in order to be liable under this statute, the person selling or soliciting orders must do so for a person, co-partnership, or corporation not residents of the State, and not having their principal place of business within the State, but the *tax is upon the person soliciting, who may be a resi-*

dent, or non-resident, and *not upon the party resident in another State who ships the goods.*

It is, therefore, a tax upon the *person soliciting*, and not a tax upon the *dealer* who furnishes or ships the goods; upon the one who *solicits* orders or makes sales, and *who may or may not be a resident*, and not upon the *dealer who is a non-resident;* and it is therefore, *not a tax upon commerce* within the constitutional provisions cited above, nor does it attempt to regulate commerce between this State and other States, but it is a tax upon *occupations.*

Said Chief Justice Marshal in McCullough v. Maryland, 4 Wheat., 428, "The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it," and again in Brown v. Maryland, 12 Wheaton, 444, he recognizes the rights of a State to tax occupations generally.

See also Nathan v. Louisiana, 8 How., 80.
Brown v. Maryland, 12 Wheat., 444.
Nathan v. Lou., 8 How., 80.
Pierce v. New Hampshire, 5 How., 593.
Hinson v. Lou., 8 Wall., 148.
Machine Co. v. Gage, 100 U. S., 676.

It may be claimed that in this case it is a tax upon the *business* and not *upon the individual*, and is therefore an attempt to regulate commerce among the several States; and that Brown v. Maryland, above cited settles the point that taxation upon the individual is a tax upon the business, but

upon examination of this case it will be found that the facts are not similar.

The State of Maryland required every *importer* of goods to pay a license fee of fifty dollars before he should be permitted to sell a package of *imported goods*, and it was held that this was a tax upon importation and in conflict with the constitutional provisions urged by counsel for defendant in this case.

It will hardly be contended that a tax upon the person who solicits orders for liquors, to be sold or shipped by non-residents to residents of this State, stands upon the same footing as a tax upon an importer of foreign goods.

In the case at bar there is no importer of foreign goods taxed and no foreign imports to be affected thereby.

It has been frequently held that the terms *imports* and *exports* do not refer to goods brought from one State into another, but only articles imported from and exported to foreign countries.

Woodruff v. Parham, 8 Wall., 123.
License cases, 5 How., 593.

So also it has been held in the latter cases that a State may require a license to sell ardent spirits of foreign, as well as of domestic manufacture, and that a law authorizing such a tax would not be a regulation of commerce, but within the police power of the State.

While the power to regulate commerce with foreign nations and among the States, is solely with Congress, yet, as was said by Justice McLean in the Passenger cases, "In giving the commercial power to Congress, the States did not part with that power of self-preservation, which must be inherent in every community. They may guard against the introduction of anything which may corrupt the morals, or endanger the health or lives of their citizens. Quarantine or health laws have been passed by the States, and regulations of police for their protection and welfare."

Passenger cases, 7 How., 283.

So also in Gibbon v. Ogden, the Court in speaking of the power of Congress over commerce, says: "The acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens, may enable it to legislate on this subject (commerce) to a considerable extent."

Gibbons v. Ogden, 9 Wheaton, 208.

In Pierce v. New Hampshire, the third of the license cases, the power of a State to tax goods brought from, and manufactured in another State, was fully discussed and settled.

The defendants in that case imported a barrel of gin from the State of Massachusetts to the State of New Hampshire, and there sold it in the same barrel, and claimed that they could not be required to pay a license tax upon such sale.

The Court, however, sustained the law of New Hampshire, and held that the act requiring the payment of a license tax for such sales was valid, and was not in conflict with the Constitutional provisions urged by defendant in this case.

Pierce v. New Hampshire, 5 How., 593.

The Court, in the above case, distinguished between that case and the case of Brown v. Maryland, and while agreeing with the decision of the Court, so far as it applied to commerce with foreign nations, yet it held that the rule there laid down did not apply to goods shipped from sister States into New Hampshire.

The case of Brown v. Maryland arose out of a statute of that State; taxing by way of *discrimination, importers* who sold by wholesale foreign goods, while the case at bar requires a *less tax from a non-resident* who sells at wholesale within this State, through his solicitor, or agent, than is required from the resident wholesale dealer who sells within this State.

And right here let me say, that in every case where there has been no unjust discrimination between the tax, or license, imposed upon goods within the States, and goods brought into them from other States of the Union, the tax has been upheld as constitutional, and not in violation of any of the Constitutional provisions urged in this case.

In Woodruff v. Parham this principle was fully discussed,

and it was held that a uniform tax upon sales was good whether the goods sold were the produce of the State of Alabama, or of some other State—or whether sold by a citizen of Alabama, or by a citizen of some other State.

Woodruff v. Parham, 8 Wall, 123.

In Webber v. Virginia, 103 U. S. 344, the decision of the court, adverse to the law of Virginia, was based entirely upon the *discriminating* character of the license tax, which required agents for the sale of articles manufactured in other States to pay a license tax, while an agent for the sale of the same article manufactured within the State, was exempt from any tax whatever.

The court, however, in its decision, recognized the validity of such taxation when there was no unjust discrimination, as had before been frequently held, and some of which cases I cite.

Ward v. Maryland, 12 Wall., 418.
People v. Maring, 3 Keyes, 374.
Gibbon v. Ogden, 9 Wheaton, 199.
Nathan v. Louisiana, 8 How., 82.
Hinson v. Lott, 8 Wall., 151.
Connor v. Elliott, 18 How., 593.
State v. North, 27 Mo., 467.
Paul v. Virginia, 8 Wall., 177.
Cooley's Const. Lim., p. 16.
Guy v. Baltimore, 100 U. S., 434.
Machine Co. v. Gage, 100 U. S., 676.

In Hinson v. Lott, and Machine Co. v. Gage, above cited the right to require payment of a tax of the nature of that demanded under the laws of 1875, was held good.

In the latter case, a law of Tennessee required agents or peddlers of machines to pay a tax. An agent of the Howe Machine Co., manufacturing machines in Connecticut, was sent into Tennessee to sell machines, and refused to pay the tax required of him to make sales in that State, but the law was held valid.

II.

That the act is not in conflict with paragraph 2, Sec. 10, Art. 1, of the constitution of the United States, which prohibits the States, without the consent of Congress, to lay any *imposts* or *duties* on *imports* or *exports*, etc., has been frequently decided by this Court.

It has been held by this Court, that the terms "*imposts*" and "*duties*," refer solely to the duties upon foreign and imported articles, and do not refer to taxes in the nature of license taxes, or special taxes which grow out of the internal police regulations of the State; and that the terms "*imports*" and "*exports*" do not refer to *goods brought from one State into another, but only to articles imported from, or exported to, foreign countries.*

Brown v. Maryland, 12 Wheaton, 454.
Woodruff v. Parham, 8 Wall. 123.
License Cases, 5 How., 593.

III.

The third assignment of error is that the act of 1875 heretofore set forth is in conflict with par. 1, sec. 2, art. 4, of the Constitution of the United States, which provides that "The

citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

The laws of Michigan, as found in Howell's Annotated Statutes, provide as follows:

(Sec. 1281.) SEC. 1. In all townships, cities, and villages of this State, there shall be paid annually the following tax upon the business of manufacturing, selling, or keeping for sale, by all persons whose business, in whole or in part, consists in selling, or keeping for sale, or manufacturing distilled or malt liquors, or mixed liquors, as follows: Upon the business of selling or offering for sale spirituous or intoxicating liquors, or mixed liquors, by retail, or any mixture or compound, excepting proprietary patent medicines, which in whole or in part consists of spirituous or intoxicating liquors, the sum of three hundred dollars per annum; upon the business of selling or offering for sale, by retail, any malt, brewed, or fermented liquors, two hundred dollars per annum; upon the business of selling brewed or malt liquors at wholesale, or at wholesale and retail, *two hundred dollars per annum*; upon the business of selling spirituous or intoxicating liquors at wholesale, or at wholesale and retail, *five hundred dollars per annum*; upon the business of manufacturing brewed or malt liquors for sale, if the quantity manufactured be less than fifteen hundred barrels, sixty-five dollars per annum, and twenty-five dollars upon each additional thousand barrels, or part thereof; upon the business of manufacturing for sale spirituous or intoxicating liquors, five hundred dollars per annum. No person paying a tax on spirituous or intoxicating liquors, under this act, shall be liable to pay any tax on the sale of malt, brewed, or fermented liquors. No person paying a manufacturer's tax on brewed or malt liquors under this act, shall be liable to pay a wholesale dealer's tax on the same.

It will be seen by reference to the act in question, and the provision above set forth, that the person selling, or soliciting the sale of intoxicating liquors at wholesale, to be shipped

into this State by *non resident* dealers, is required to pay a tax of $300; and for selling malt, brewed, or fermented liquors, the sum of $100, while the *resident* wholesale dealer is, by the above section, required to pay a tax of $500; and for malt, brewed, or fermented liquors, a tax of $200, from which it will be found that the *non resident* may sell intoxicating liquors at wholesale, by paying only *three-fifths* of what is required of the resident dealer, and may sell malt and fermented liquors by paying *one-half* of that required of the resident dealer.

This *discrimination is all in favor of the non resident*, and so long as the non resident does not pay a greater sum than the resident, there is no unjust discrimination against him. He has no cause for complaint, and is not deprived of the privileges and immunities of citizens of this State.

Guy v. Baltimore, 100 U. S., 438.
Ward v. Maryland, 12 Wall., 418.

The tax is not a tax upon foreign commerce, as was the case in Brown v. Maryland; it does not interfere or attempt to regulate commerce between this State and other States only so far as the police power may lawfully extend; and being free from unjust discrimination, we think the several assignments of error are not well taken, and the act is not in conflict with the Constitution of the United States, and should be sustained.

J. J. VAN RIPER,
Attorney General of Mich.